IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1413 OF 2006

Mr. Abhishek Ambuj Kasliwal ...Applicant.
v/s

The State of Maharashtra ....Respondent.

Mr. V.R. Manohar, Senior Counse, with Mr. Shirish Gupte, Senior Counsel with Mr. Shyam Dewani, Mr. S.A. Jagtap, Mr. P.A. Savant, Mr. M.M. Jayakar, Mrs. U.K. Dhanukar and Mr. S.Garud i/b Khaitan & Jayakar for the applicants.

Mr. S.R. Borulkar, Chief Public Prosecutor with Ms. Rajeshree M. Gadhvi, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 18th April, 2006

P.C.:

1. Heard the learned Counsel for the applicant and the learned Chief Public Prosecutor for the State.

2. This is an application for bail filed by the applicant who was arrested on 12/3/2006 in connection with the offence punishable under sections 376, 325 of the Indian Penal Code which was registered vide C.R. No.75 of 2006 with the Worli Police Station, Mumbai. The applicant is in custody since then. Initially, the applicant was remanded to the police custody and, thereafter, has now been remanded to the judicial custody. The applicant is in jail for last 35 days.

FACTS:

3. The prosecution case in brief is that the prosecutrix was waiting for a friend at about 2.30 a.m. in the morning opposite the Rigle Cenema when a car approached her and the person driving the car opened the door and asked her where she was going. The prosecutrix replied that she was going towards the Bombay Central and the person who was driving the car informed her that he is also going towards that side and offered to give her a lift which was readily accepted by her and she stepped into the front seat of the car. It is alleged by the prosecutrix that the person who was driving the car was drinking some liquid in a Bisleri bottle. He offered her drink and when she inquired what it was, he informed her that it was Cocacola mixed with Bacardi Rum. The prosecutrix accepted the drink. She asked him his name to which the person in the car replied that his name was Viky Malhotra. Thereafter, it is the case of the prosecution that the prosecutrix was taken to the compound which was guarded by a gate and after having gone there, the said person committed rape on her after forcibly removing her clothes and squeezing her right arm and reclining the front seat. The case of the prosecution is that the said person raped her on

four times during the period when the car was in the said compound. It is the prosecution case further that while they were lying in the same condition after the said act was committed, he offered her drink which was accepted and consumed by her. Thereafter, both of them put on their clothes and then she was taken back to the place from where she was picked up. She demanded money for her medical treatment. However, the accused got down from the car, opened the door and forcibly threw her out side the car and, thereafter, went away. The prosecutrix further has stated in her statement that, thereafter, she proceeded to go to St. George's Hospital and on the way when was proceeding by ambassador hotel, she met her friend who took her to the St. George's Hospital where she was examined by the doctor who, after examination, informed her that she had a fracture in the right arm. Thereafter, she was taken to MRA Marg Police Station and from the said place she was taken to Colaba Police Station. However, on the next day, she gave the number of the vehicle which was driven by the accused and located the compound and the accused was arrested. FIR was then transferred to the Worli Police Station since, according to the prosecution, Worli Police had jurisdiction to investigate the case since the offence had taken place within its jurisdiction.

4. The application for bail filed by the applicant in the Court of the Metropolitan Magistrate was rejected. Thereafter, another application was preferred in the Sessions Court which also was rejected. The applicant, therefore, has filed this application in this Court.

ARGUMENTS:

5. Shri Manohar the learned Senior Counsel appearing on behalf of the applicant submitted that the Investigating Agency had committed a serious lapse while filing the remand application and the learned Magistrate had committed an error in not perusing the case diary which was a mandatory requirement as provided under section 167(1) read with section 172 of the Criminal Procedure Code. The learned Counsel, thereafter, invited my attention to the FIR and submitted that the conduct of the prosecutrix, as stated by her in the FIR, rules out any possibility of rape as alleged by the prosecution and establishes the probability of consensual sex between the two adults from the sequence of events as narrated by the prosecutrix.

6. The learned Senior Counsel for the applicant also invited my attention to the judgment of the Supreme Court wherein the Supreme Court has taken into consideration various aspects which are required to be taken into consideration while considering the question of grant of bail, more particularly in cases where allegations of rape are made by the prosecutrix. He also invited my attention to the observation made by the Supreme Court in respect of the role played by the media and the note of caution which the Supreme Court has given in the said judgment which has to be taken into consideration by all courts while considering the application for bail.

7. The learned Senior Counsel submitted that the media, in the present case, had interfered by publishing certain news items which had, in turn, apparently influenced the lower courts in rejecting the application of the applicant. He invited my attention to the news item which had appeared in Mid Day on 20/3/2006. He also invited my attention to the notice which was sent by Solicitors of the applicant and denial of pressure being exercised on one of the doctors who had examined the applicant, which later on appeared in the news-paper. He submitted that,

however, in the remand application, the prosecution had encashed on the said news items and had stated that there was a possibility of tampering at the hands of the applicant.

8. He further submitted that the Sessions Court had rejected the application on two counts. He invited my attention to paragraphs 10 and 12 of the said order wherein the Sessions Court had observed that the matter in question was very serious and, secondly, in para 12 it observed that since the two witnesses who were guards posted at the gate of the factory were employees of the applicant's father, there was a possibility of tampering. He submitted that the said two grounds, according to him, were patently incorrect.

9. The learned Chief Public Prosecutor appearing on behalf of the State vehemently opposed the bail application tooth and nail and submitted that this is a fit case where the bail application was liable to be rejected. He strongly refuted the submissions made by the learned Counsel for the applicant on the ground of non-compliance of the provisions of section 167(1) read with section 172 of the Criminal Procedure Code and submitted that there was no factual foundation to

justify the said ground which has been raised and submitted that factually also it was not correct and he submitted that the learned Magistrate had, while granting the remand application to the applicant, perused the case diary and only after having satisfied himself regarding the need to grant remand, the case of the prosecution was accepted. He submitted that the contention of the applicant that the case was concocted is incorrect. He invited my attention to the statement of various witnesses which were shown to me. He also invited my attention to the medical papers which indicated that there was a fracture to the hand of the applicant and that there were other scratch marks, bite marks on her body which indicated that there was no consent. He submitted that, therefore, the theory of concoction by the police and the prosecuting agency was incorrect. He further submitted that the theory of consent as alleged by the applicant also was not borne out from the record and the material which was available with the police. He also invited my attention to the statements of other witnesses who had stated that he was also assaulted by friends of the present applicant. He further submitted that the applicant was not entitled to be released on bail. He invited my attention to the judgments of the Supreme Court in the cases of State

of U.P. through CBI Vs. Amarmani Tripathi reported in (2005) 8 SCC 21, Ram Govind Upadhyay Vs. Sudarshan Singh & Ors reported in AIR 2002 SC 1475, Prahlad Singh Bhati Vs. NCT, Delhi & anr reported in (2001) 4 SCC 280, State of Punjab Vs. Gurmit Singh & Ors reported in 1996 SC 1393, Sunil Atmaram More Vs. State of Maharasthra decided by this Court in Criminal Application No.6016 of 2005 decided on 20/9/2005.

FINDINGS AND CONCLUSION:

10. After having heard both the Counsel at length and after having given my thoughtful consideration to the submissions made by them, in my view, the applicant has made out a case for grant of bail for the following reasons.

11. Before considering the factual aspect of the case, it is necessary to briefly consider the law on the point of bail since both the counsel have relied upon the judgments of this Court and the Supreme Court on the question of grant of bail. There cannot be a strait jacket formula which can be evolved or laid down for the purpose of considering the application for bail which is filed by an under-trial prisoner who is facing the prosecution. Different parameters would

be applicable depending upon the stage of the investigation and the stage of the trial on the one hand and the seriousness of the offence, the sentence which is likely to be awarded if the case is proved against the accused, the possibility of the accused tampering with the evidence or threatening the witnesses and last but not the least whether the accused is likely to abscond and refuse to face the trial on the other hand.

12. From the conspectus of the judgments on which the reliance is placed by both sides, it is abundantly clear that the bail essentially cannot be refused and accused should not be detained by way of punishment for the alleged offence which, according to the prosecution is committed by the accused. The cardinal principle of criminal jurisprudence is that a person is deemed to be innocent till he is proved guilty in a trial. It is a common knowledge that on account of pendency of cases the reasons for which are many and numerous and need not be gone into while considering this application, the disposal of criminal trial takes a very long time. In some cases the trial is not over for more than 5 to 6 years. Fortunately, however, on account of fast track court, the position has slightly changed. Yet, it takes long time for disposal of the

case and, under such circumstances, if all other conditions and circumstances are fulfilled by the accused, the view which has been taken consistently by the Apex Court and this Court is that during this period he need not be detained as an under-trial prisoner as there is an inherent possibility that he may be acquitted in the criminal case which is filed against him and, in that eventuality, the years he has spent in incarceration cannot be given to him by the State and, therefore, very often a balance is struck between the two conflicting rights of the prosecution of not allowing the person who is accused of having committed serious crime leaving the custody of the police or the Magistrate even after the interrogation is over and the right of an individual to be on bail during the pendency of the trial and it is essential to harmonise and reconcile these conflicting interests.

13. The learned Senior Counsel appearing on behalf of the applicant has given a compilation of various judgments on which reliance is placed by him. He has referred to two judgments from the said compilation in respect of the principles which are laid down by the Supreme Court for grant of bail. He relied upon the judgment of the Supreme Court in the case of

Bhagirathsinh Judeja vs. State of Gujarat reported in **AIR 1984 SC 372**. He invited my attention to paragraphs 5 and 6 of the said judgment which read as under:-

> "5.....We fail to understand what the learned Judge of the High Court desires to convey when he says that once a prima facie case is established, it is necessary for the court to examine the nature and gravity of the circumstances in which the offence was committed. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence. We would have certainly overlooked this aspect of the matter if the approach of the learned judge was otherwise one which would commend to us....."

> "6.....And the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence....."

He then relied upon the judgment of the Supreme Court in the case of Kiran Kumar Vs. State of M.P. reported in **(2001) 9 SCC 211**. He invited my attention to para 3 of the said judgment which reads as under:-

> "3. This Court has held in Bhagwan Rama Shinde Gosai Vs. State of Gujarat [(1999) 4 SCC 421 : 1999 SCC (Cri) 553] that when a person is convicted and sentenced to short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by

way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes infructuous so far as the appellant is concerned. It does not mean that the appellate court should suspend the sentence, if its consequence would be a danger to the society or any other similar difficulties."

14. The learned Chief Public Prosecutor, on the other hand relied upon the judgment of the Supreme Court in the case of Prahlad Singh Bhati Vs. NCT, Delhi and another reported in **(2001) 4 SCC 280** and invited my attention to para 8 of the said judgment which reads as under:-

8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature

> of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

He also invited my attention to the judgment of the Supreme Court in the case of State of Punjab Vs. Gurmit Singh and others reported in **AIR 1996 SC 1393**

and particularly the observations made in para 13 of the said judgment after having invited my attention to the facts of the case in para 1 and 2 of the said judgment. He also invited my attention to the judgment of the Supreme Court in the case of Ram Govind Upadhyay vs. Sudarshan Singh and others reported in AIR 2002 SC 1475 and particularly to paragraphs 3 and 4 wherein the supreme Court has observed as under:-

> "3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances

warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail - more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being:

. (a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

. (b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for

the complainant should also weigh with the Court in the matter of grant of bail.

. (c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be prima facie satisfaction of the court in support of the charge.

. (d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

15. The learned Chief Public Prosecutor also relied upon the judgment of the Supreme Court in the case of State of U.P. through CBI Vs. Amarmani Tripathi retorted in **(2005) 8 SCC 21** and he referred to para 18 of the said judgment which reads as under:-

"18. It is well settled that the matters

to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi [(2001) 4 SCC 280: 2001 SCC (Cri) 674] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118 : 1978 SCC (Cri) 41: AIR 1978 SC 179]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his

liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant of refusal of bail stated in Kalyan Chandra Sarkar V. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC(Cri) 1977] (SCC pp. 535-36, para 11).

. "11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

. (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

. (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

. (c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh[(2002) 3 SCC 598 : 2002 SCC (Cri) 688] and Puran Vs. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124.

Finally, he relied upon the judgment of this Court in the case of Sunil Atmaram More Vs. The State of Maharashtra in Criminal Application No.6016 of 2005 decided on 20/9/2005 and particularly the observations made by the learned Single Judge in para 7 of the said order.

16. Keeping in view the ratio and observations made by the Supreme Court and this Court, I shall now proceed to consider the facts of the present case and the submissions of the learned Counsel for the applicant and the State.

17. In the present case, essentially, the facts need not be restated as the gist of the FIR has already been reproduced in the foregoing paragraphs. The applicant has allegedly committed an offence punishable under section 376 of the Indian Penal Code. He was arrested on 12/3/2006 and he is in jail since then. During the course of arguments, when a query was made to the learned Chief Public Prosecutor Shri Borulkar regarding the stage of investigation, he submitted that the investigation was almost over and a report from the Chemical Analyser is received and the brain mapping test of the accused had been performed and the statements of most of the witnesses had been recorded.

18. Since the investigation is over, the question which needs to be considered is whether the continued detention of the applicant is necessary.

19. The prosecutrix in the complaint has stated that her husband expired in March 2005 and, originally, she was residing at Vishakhapatnam, Andhra Pradesh and after the death of her husband she went to Calcutta and stayed there with her boy friend. Then in September, 2005, she came to Mumbai and stayed in hotel at Bombay Central for some time and she has stated that she had a habit of drinking beer and smoking cigarette. Thereafter, she has stated that after the death of her husband she was mentally disturbed and after having left the hotel at Bombay Central, she went to Goa and stayed there for a few days. Then she returned back to Mumbai and she used to sleep at night on the ground opposite Churchgate Railway Station and, during night, she used to roam on Chowpaty Sea face or Gateway of India and her expenses of food and her habits were borne by her friends Jenifer and Stefni. Then she has stated that two weeks before the incident she had met steward by name Francis at the Sports Bar, Colaba where she had gone to drink beer and she had once met Francis thereafter at bus stop near Regal junction and opposite the museum and they had travelled by bus to Churchgate. Regarding the incident in question, she has stated that on 10/3/2006, she came to Colaba at 8.30 p.m. and she waited near Gateway of India for spending some

time. Thereafter, at 2.30 a.m., she came to the bus stop opposite the museum near Regal junction and was waiting for the said Francis to come whom she had met earlier. In order to see what was the exact time, she went towards the Devid Sasoon Library and, at that time, a big black coloured vehicle came and stopped near her and then she was given lift and further course of events as stated in para 3 hereinabove took place. There are few statements of the prosecutrix which need to be mentioned here since they are relevant for the purpose of deciding this application. She has stated that after she was taken in the compound, he forcibly removed all her clothes and his own clothes and raped her continuously for four times. She has stated that after the intercourse was over, he gave her the bottle containing liquor to drink and after that both of them put on their clothes and then he dropped her in Colaba area near Kishan Agabeg Hotel and when she asked him to give money for medicines, he asked her to get down from the car and when she told him that she would not leave unless she got her money, he got down from the car, opened the door from her side and forcibly removed her and went away in his car towards S.B.S. Road. She has stated that she started walking towards St. George’s Hospital and, near Ambassador Hotel, she met a person by name Lawren whom

she knew at 8.00 a.m. According to her, she informed Lawren about what had happened and he took her to St. George's Hospital and the doctor, after having examined her, informed her that there was a fracture to her right hand. From the narration of these events by the prosecutrix, it is clear that she is a destitute who has been roaming on the streets of South Mumbai and sleeping at night on the ground opposite the Churchgate Station. Secondly, in respect of the alleged incident of rape, both the accused and the prosecutrix had consumed liquor before the alleged rape and he had offered her liquor after the alleged rape was over and they had consumed liquor after the incident before they had put on their clothes. The prosecutrix was then dropped at Colaba where she had demanded money for medical expenses which was not given to her by the accused. She was, thereafter, thrown out from the car and after that she had raised hue and cry and had abused the accused loudly.

20. From the narration of facts, as stated by the prosecutrix, the possibility of consensual sex is not entirely ruled out. The defence, at this stage of grant of bail, has not challenged the statements of security guards or in respect of the event which had taken place but it is submitted that after she was

driven out of the car, since the money was not paid to her as demanded by her, the complaint was lodged.

21. Without making any observation on the merits of the case, since the investigation of the present case is going on and is not completed, it would not be proper for this Court to record a finding on the merits of the case. Yet, considering the averments of the prosecutrix which are made by her in the FIR, the facts disclose that the prosecutrix does not appear to have a fixed place of residence and appears to live life as destitute after the demise of her husband. The description about the manner and method in which the said offence which is alleged to have been committed by the applicant does disclose that the prosecutrix had accompanied the applicant on her own free will and, subsequently, she was also dropped by him at a place from where he had picked her up. The conduct of the prosecutrix and the peculiar facts of the present case, therefore, are such that, at this stage, it is difficult to come to any conclusion whether it was a case of consensual sex or was a case of rape as alleged by the prosecution. The learned Chief Public Prosecutor also had brought to my notice the medical papers of the prosecutrix who was examined by the doctor at St.George’s Hospital which disclose

that there were no injuries to her private parts though there were injuries on her person in the form of nail marks, scratches and bites. There was also a fracture to the elbow which was noticed by the doctor when he examined her. Much emphasis was laid by the learned Chief Public Prosecutor Shri Borulkar on the said injuries for the purpose of making his submission that this clearly rules out the theory of consent which was argued on behalf of the accused.

22. On the other hand, Shri Manohar, the learned Senior Counsel appearing on behalf of the applicant has submitted that the prosecutrix had not noticed the said injury till she was informed about it by the doctor and further submitted that in case of a hairline fracture it is difficult for the Orthopedic Surgeon to exactly pin point the time when the fracture has taken place and it could be at any time between one day to fifteen days. Shri Manohar, the learned Senior Counsel also, during the course of his argument, has submitted that the said fracture could have been caused after the incident as, admittedly, according to the prosecutrix herself, she was in an inebriated state of mind and the said injury was possible due to fall.

23. It is true that from the perusal of FIR, it does appear that the prosecutrix did not feel or notice the pain till she was informed by the doctor that there was an hairline fracture. The statement in the FIR also indicates that after she was dropped near the Regal Cinema, she had walked from that place and was proceeding towards the St. George's Hospital when she met Francis who was alleged to be her friend at about 8.00 a.m. in the morning near the Ambassador Hotel which from the Map which is submitted by the learned Counsel for the applicant is not exactly on the way if one travels by foot to the St. George's Hospital. There is also much substance in the submission made by the learned Senior Counsel Shri Manohar that there were as many as 13 Police Stations on the way from the place she travelled i.e. from Regal Cinema, Sasoon Library to St. George's Hospital. However, she did not enter any of the Police Stations during this time. Therefore, in my view, the fracture which was noticed by the doctor, at this stage, cannot be said to be the result of forcible intercourse without consent by the applicant. The other injuries on her body also does not conclusively establish that she had been raped against her will.

24. In view of these peculiar facts as narrated by the prosecution and since the investigation is almost over, in my view, the applicant is entitled to be released on bail subject to certain conditions which will have to be imposed upon the applicant.

25. The applicant accordingly is entitled to be released on bail in the sum of Rs 50,000/- with one or two sureties in the like amount. The applicant is permitted initially to furnish cash surety of Rs 50,000/- and thereafter furnish sureties in the like amount within two weeks. The applicant is released on bail on the conditions mentioned hereinbelow.

26. Since the second submission made by the learned Senior Counsel appearing on behalf of the applicant has been accepted, I do not propose to deal with the legal submissions made by him in respect of the non-compliance of the provisions of section 167(1) read with section 172 of the Criminal Procedure Code.

27. Since the prosecution has expressed its apprehension that there is a possibility of tampering of the evidence by the applicant if he is enlarged on bail, in my view, it would be appropriate if he does not enter the City of Mumbai during the period when

the investigation is going on and during the pendency of the trial particularly when the applicant, as is obvious, comes from affluent family and the prosecutrix is a homeless destitute. Shri Manohar, the learned Counsel for the applicant, during the course of his argument, submitted that the applicant has a house in New Delhi including Noida and Gurgaon and that if the condition is imposed that the applicant shall not enter the City of Mumbai, he may stay in the said house in Delhi. The applicant, therefore, to stay in his house at New Delhi and shall give his address in New Delhi before he is released on bail to the Superintendent of Jail and, thereafter, report to the nearest Police Station from his residential address at New Delhi twice in a month. The applicant shall continue to stay in New Delhi till the disposal of the criminal case. However, he may be permitted to enter the City of Mumbai as and when he is called for interrogation by the Police till the filing of the charge-sheet and, thereafter, whenever he is required to attend the Sessions Court after the case is committed by the Magistrate to the Court of Sessions on such dates as are given by the Court. He shall also be permitted to attend the Sessions Court during the course of the trial. The passport which is handed over by the applicant to the police shall

continue to remain with the police till the disposal of the case. However, if he wishes to go abroad, he may do so after the permission is granted by the court on an application made by him. If the investigating Officer wishes to interrogate the applicant before filing of the charge-sheet, he shall give 72 hours notice to the applicant and then the applicant shall be permitted to enter the City of Mumbai in order to enable the Investigating Officer to carry on the investigation. The Investigating Agency may give police protection to the prosecutrix and look after her welfare as far as possible.

28. Before parting, in my view, it would be necessary to briefly comment on the grievance made by the learned Senior Counsel Shri V.R. Manohar that the applicant had been victimised by the reporting made by the press and the media and, therefore, he was already tried and convicted by the press before the matter could be decided in the Court.

29. Though, I have not gone through the media reports in respect of the present case which had appeared in the past, yet, I would like to point out that certain norms have to be followed by the press while reporting a case which is subjudice. In the past, I must say,

this convention, tradition was followed and all precautions were taken by the legal reporters. The new generation of reporters must learn these norms of legal reporting. I must make a reference to one of the leading legal reporters Shri Taraporwala who is unfortunately no more. Shri Taraporwala who was a reporter for UNI and PTI and some other Dailies, had perfected the art of giving reports in legal cases which were subjudice in the Court. The young reporters should consult their senior colleagues and should not be hasty while giving reports regarding the cases which are being heard or are pending in courts. In the present case also, on 18/4/2006, after the arguments of both sides were over, the Court started dictating the facts of the case and submissions made by both parties. However, since the Court's time was over, an operative part of the order was dictated and the reasoning and findings of the Court was dictated on the next day morning i.e. on 19/4/2006 at 11.00 a.m. Though the dictation, in the present case was not over, and the reasoning giving by this Court was dictated on 19/4/2006 between 11 a.m. and 12.30 p.m., in the news papers the reporters have quoted the reasons given by the Court for releasing the accused on bail. Without making any issue on this subject, I hope and trust that, in future, the reporters will not

commit this mistake again.

30. Accordingly the following order is passed:-

I. In the result, the application filed by the applicant is allowed. The applicant be released on bail in the sum of Rs 50,000/- with one or two sureties in the like amount on the following stringent conditions:-

(i) The applicant shall not enter the City of Mumbai during the pendency of the trial.

(ii) As it is informed by the learned Counsel appearing on behalf of the applicant during the course of arguments that the applicant's parents have an establishment at New Delhi and the applicant is willing to stay there, the applicant to give his residential address at New Delhi including Noida and Gurgaon to the Superintendent of jail before he is released on bail.

(iii) After the applicant is released on bail, he shall report to the nearest Police Station from his residential address at New Delhi

including Noida and Gurgaon twice in a month.

(iv) The applicant shall make himself available for further interrogation as and when required by the Investigating Officer.

(v) The Investigating Officer shall give the applicant 72 hours notice as and when they required him for further interrogation before the charge-sheet is filed and for that purpose the applicant shall be permitted to enter the City of Mumbai.

(vi) The applicant shall also be entitled to enter the City of Mumbai whenever he is required to attend the Sessions Court after the case is committed to the Sessions Court by the Magistrate on such dates as are given by the Court. He shall also be permitted to attend the Sessions Court during the course of trial.

(vii) The applicant shall co-operate with the Investigating Agency and the applicant or any of his relatives shall not tamper with the evidence or threaten the witnesses.

(viii) The Investigating Agency may give police protection to the prosecutrix and look after her welfare as far as possible.

(ix) The passport of the applicant shall remain with the Investigating Officer and if he intends to go abroad, he may do so after the permission is granted by this Court on an application made by him.

(x) Liberty is granted to the applicant to apply for relaxation of the condition of not entering the City of Mumbai after the charge-sheet is filed.

II. The applicant is permitted initially to furnish cash surety of Rs 50,000/- and thereafter furnish sureties in the like amount within two weeks.

III. Application is accordingly disposed of.

V.M. KANADE, J.